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No. 237] NEW DELHI, MONDAY, SEPTEMBER 21, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 7th September 1953

S.R.O. 1736.—Whereas the election of Shri Murli Manohar, as a member of the House of the People, from the Ballia District East constituency of that House has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Pt. Govind Malaviya, s/o Pt. Madan Mohan Malaviya, P.O. Lanka, Banaras City;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT ALLAHABAD

PRESENT:

Sri V. G. Oak, I.C.S.—*Chairman.*

Sri N. N. Mukerji—*Member.*

Sri Babu Ram Avasthi—*Member.*

ELECTION PETITION No. 198 OF 1952

Sri Govind Malaviya—*Petitioner.*

Versus

Sri Murli Manohar and 6 others—*Opposite Party.*

JUDGMENT

This election petition has been filed by Sri Govind Malaviya challenging the election of Sri Murli Manohar to the House of the People from Ballia-East Constituency during the last general election. The petitioner and the seven respondents were candidates for election to the House of the People from the said Constituency. Respondents Nos. 4, 5, 6 and 7 withdrew from the contest within the prescribed time. The petitioner and respondents Nos. 1, 2 and 3 contested the election. Sri Murli Manohar respondent No. 1 was declared elected. According to the petitioner, Sri Murli Manohar's election is void for various reasons.

According to the petitioner, respondent No. 1 held an office of profit under Government as a retained Government Railway Pleader. His nomination was improperly accepted. Respondent No. 1 is the President of the Managing Committee of the Town Higher Secondary School, Ballia. Sri Mata Bux and Sri

Candrika Prasad Sinha, who were respectively the presiding officers at Dighar and Sonbarsa, were respectively the principal and a teacher in the said school. As such, these two presiding officers were under the influence of respondent No. 1. The two presiding officers broke open ballot boxes, and swelled the number of ballot papers of respondent No. 1. Again, Keshava Lal, who is a clerk of respondent No. 1, is a brother of Sri Kanhaiya Lal, who was the presiding officer at Dumaria. Sri Kanhaiya Lal illegally introduced 600 unpolled ballot papers in the ballot boxes of respondent No. 1. The presiding officer of polling station Reoti was in league with respondent No. 1. This officer did not seal ballot boxes in the presence of agents of candidates, did not allow the agents, except those of respondent No. 1, to work at the polling booths, and personally canvassed in favour of respondent No. 1. The female polling officer at Reoti took ballot papers from voters, and herself put those ballot papers into the ballot boxes of respondent No. 1. Respondent No. 1 carried voters in a motor vehicle to polling station Khawaspur. Respondent No. 1 paid a sum of Rs. 1,000 to respondent No. 3, and induced him to contest the election in order to divide petitioner's votes. Respondent No. 1 took assistance from a number of patwaris. In particular, Krishna Dutt Patwari of village Sher canvassed in favour of respondent No. 1. Respondent No. 1 is the chairman of Municipal Board, Ballia. He utilized funds, labour and material belonging to the Municipal Board, and constructed a bridge over a river, and induced electors from villages Inderpur and Chiraiya to vote for respondent No. 1. Ballot boxes of the petitioner for polling stations Nos. 66 and 76 of Duha Bihra and Qazipur were found broken and tampered with. Some wrong ballot papers were issued for Chandpur Polling Station. The petitioner urged that for all these reasons the election of respondent No. 1 is void. The petitioner would have been duly elected but for the corrupt and illegal practices indulged in by respondent No. 1, and irregularities committed during the election. The petitioner, therefore, prayed that election of respondent No. 1 be declared void, and the petitioner be declared duly elected. In the alternative, it was prayed that the election of respondent No. 1 be declared void.

The election petition was opposed by Sri Murli Manohar respondent No. 1. He denied that he was a retained Government Railway Pleader, or that he held any office of profit under Government. It was denied that respondent No. 1 is the President of the Managing Committee of the Town Higher Secondary School, Ballia, or that the principal of the School and his subordinates are under the influence of respondent No. 1. It was denied that Sri Mata Bux or Sri Chandrika Prasad Sinha broke open boxes, or changed ballot papers in favour of respondent No. 1. It was denied that Keshava Lal is clerk of respondent No. 1, or that Sri Kanhaiya Lal is under the influence of respondent No. 1, or that Sri Kanhaiya Lal introduced 600 unused ballot papers in ballot boxes of respondent No. 1. It was denied that the presiding officer of polling station Reoti was in league with respondent No. 1, or that this presiding officer canvassed for respondent No. 1, or committed any irregularity about sealing of ballot boxes or giving opportunities to candidates' agents to work at the polling booths. It was denied that the lady polling officer at Polling Station Reoti took ballot papers from voters, and herself put them in the ballot box of respondent No. 1. It was denied that the motor vehicle in question was used for carrying electors to or from Khawaspur Polling Station. Payment of Rs. 1,000 by respondent No. 1 to respondent No. 3 was denied. It was denied that Krishna Dutt Patwari canvassed for respondent No. 1. It was denied that respondent No. 1 constructed a pole-bridge as alleged by the petitioner. The alleged irregularities relating to polling stations Duha Bihra, Qasipur and Chandpur were denied. It was denied that the alleged irregularities materially affected the result of the election. It was pleaded that the association of alternative reliefs in the petition are unsustainable in law.

Sri Ram Vyas Shastri, respondent No. 3, filed a separate written statement denying the charge that he received a bribe from respondent No. 1. Respondent No. 1 in his written statement raised certain objections as regards the frame of the election petition and its verification. Those objections gave rise to three preliminary issues, which were disposed of by us on 2nd December 1952. That order will form part of this judgment. The following issues arose on merits of the election petition:—

ISSUES

1. Is the respondent No. 1 a retained Government Railway Pleader? If so, was his nomination improperly accepted, and did it materially affect the result of the election?
2. (a) Is the respondent No. 1, President of the Managing Committee of Town Higher Secondary School, Ballia?

(b) Did Sri Mata Bux, the Presiding Officer of Dighar Polling Station and Sri C. P. Sinha, Presiding Officer of Sonbarsa Polling Station break open the ballot boxes of the petitioner and swell the number of ballot papers of respondent No. 1? If so, were they induced by respondent No. 1 to do so?

3. Is Sri Kesho Lal, brother of Kanhaiya Lal, a clerk of the respondent No. 1? Is Sri Kanhaiya Lal under the influence of respondent No. 1? Did Sri Kanhaiya Lal the Presiding Officer of Domaria Polling Station put 600 unused ballot papers in the ballot boxes of respondent No. 1 with his connivance?

4. (a) Was the Presiding Officer of Reoti polling station in league with respondent No. 1?

(b) Did the Presiding Officer omit to seal the ballot boxes in the presence of the agents of the candidates?

(c) Did he disallow the agents of the candidates, except those of respondent No. 1, to work at the polling booths up to 10 A.M.?

(d) Did he further induce the voters to vote for the respondent No. 1?

5. Did the Lady Polling Officer of booth No. 1, Reoti Polling Station take the ballot papers from the voters as mentioned in para. (17) of the petition and para. (8) of the list, and put them in the ballot box of respondent No. 1?

6. Was the car No. UPG 130 used for the conveyance of electors to and from Khawaspur Polling Station as detailed in list 50A? If so, was it done with the consent and connivance of respondent No. 1?

7. Did the respondent No. 1 give a bribe of Rs. 1,000 to respondent No. 3 on 20th January 1952, at the residence of B. Triloki Prasad Singh in order to induce him to contest the election with a view to divide the votes of the petitioner? If so, has this materially affected the result of the election?

8. Did the respondent No. 1 influence Sri Krishna Dutt Patwari of village Sher to canvass for him and did he actually canvass for him?

9. Did the respondent No. 1 construct a pole-bridge over river Sarju on 12th February 1952 with the funds, labour and material of Municipal Board, Ballia at a cost of Rs. 50, and thus abuse his position as a Chairman and induce the voters to vote for him?

10. Were the ballot boxes of the petitioner of Polling Stations Nos. 66 and 76 of Duha Bihara and Qazipur respectively found broken and tampered with before the commencement of the counting? If so, its effect?

11. Did the use of some wrong ballot papers issued for the Chandpur polling station materially affect the result of the election?

12. Did any of the irregularities alleged to have been committed by the election officers materially affect the result of the election?

13. Does the association of alternative reliefs prayed for in the petition render the petition unsustainable in law?

14. To what relief, if any, is the petitioner entitled?

Before taking up specific issues, it will be convenient to give the general background of this case. The Constituency is Ballia East. The petitioner is a resident of Banaras. The respondent (since Sri Murlī Manohar, respondent No. 1, is the main respondent, it will be convenient to refer to him as the respondent) is an Advocate practising at Ballia since 1926. He was in the Congress since 1920. He was President of the District Congress Committee several times. He has been Chairman of the Ballia Municipal Board since 1946. At one stage the respondent was nominated for the general elections on the Congress ticket from certain constituency. But his nomination was subsequently cancelled. When applied in 1951 for Congress nomination, he gave an undertaking not to stand against the Congress even if he was not nominated. But on finding that his nomination had been cancelled, he did not abide by his undertaking. He stood for election to the House of the People as an independent candidate, and got elected.

Polling for this Constituency took place on four different dates. Polling as originally fixed took place on the 25th, 28th and 31st of January 1952. Some irregularity was noticed with respect to polling stations Inderpur and Khawaspur. So re-poll took place at Polling Stations Inderpur and Khawaspur on 14th

February 1952. As a result of the polling on the first two dates (25th January 1952 and 28th January 1952), the petitioner secured 26,370 votes and respondent received 34,154 votes. In this way the polling on these two dates gave the respondent a lead over the petitioner by more than seven thousand votes. Shri A. P. Pande, appearing for the respondent, argued that, on finding that the respondent had obtained a decisive lead in the election, the petitioner proceeded to invent false charges against the respondent as regards the poll on 31st January 1952 and the re-poll of 14th February 1952. It is difficult to say how much information about the position of polling was available to the petitioner between the 28th and 31st of January 1952, and how his mind was working at that time. We mention this point merely as a general approach to the entire case.

FINDINGS

Issue No. 1.—The petitioner did not lead evidence on this issue i.e. the first instance. One document (Ex. 16) was introduced in the course of cross-examination of Sri Maheshwar Dayal Tewari (D.W. 6). Ex. 18 is a list of railway pleaders. Against serial No. 34 in Ex. 18 we find the name of Sri Murli Manohar against the court at Ballia. Sri Tewari (D.W. 6) is Assistant Traffic Superintendent, North Eastern Railway. He is posted at Gorakhpur. He stated that Sri Murli Manohar is not a "retained railway counsel". He is just a pleader like any other pleader. Whenever the railway engages him, he is engaged through a separate Vakalatnama. He is at liberty to appear against the railway in cases in which he has not been engaged by the railway. Sri Murli Manohar is not paid any retainer fee. Sri Tewari explained that the expression "railway pleader" appearing in Ex. 18 means a pleader approved by the railway. Ex. R is an office order prepared by the Superintendent of Claims. This order gives a distribution of courts among Law Inspectors. Sri R. P. Srivastava was appointed Law Inspector for Azamgarh-Ballia. A copy of this order was forwarded to Sri Murli Manohar with the remark that, "with effect from 1st October 1950 they will appear only in cases in which they are specifically asked by this office to do so." D.W. 7 is Sri R. P. Srivastava, Law Inspector. He stated that he engages Sri Murli Manohar in difficult cases or cases of high valuation. He does not engage the respondent in every case. If the Inspector does not engage Sri Murli Manohar in any case, the opposite-party is free to engage him.

The point under consideration is mentioned in paragraph 9 of the petition and paragraph 1 of the list of particulars. There is no reference to the rule, under which the respondent is said to be disqualified for election. During arguments reference was made to article 102 of the Constitution, and section 7(e), R.P. Act 1951. Article 102(1)(a) of the Constitution runs thus: "A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder." Section 7(e), R.P. Act, 1951, states: "A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State— if he is a director or managing agent of, or holds any office of profit under, any corporation in which the appropriate Government has any share or financial interest, the question for consideration is whether the respondent was holding an office of profit under the railway.

In 'Harnandan Prasad V. Kamta Prasad Kakkar' (1924 A.L.J. 129) the defendant, as Civil Government Pleader of Allahabad, received Rs. 50 per mensem for giving legal advice to local officers outside the court hours. It was held that Rs. 50 per month was no doubt salary, but he was not a servant of Government within the meaning of section 43 of Municipalities Act. The question for consideration in that case was whether the defendant was a Government servant. The question for decision in the present case is whether the respondent holds an office of profit under the railway.

In 'Mahammad Bux V. Mohammad Abdul Baqi Khan' (1923 Indian Cases page 490), it was held by the Allahabad High Court that, the proper meaning which should be ascribed to the words "place of profit" in the U.P. Municipalities Act is one which denotes position and employment in the sense of having a title attached to such employment and a definite standing and partaking of the nature and character of master and servant. A contractor who receives remuneration for the supply of articles cannot be said to hold a place of profit, and is not, therefore, disqualified from standing for election to the Municipal Board.

In 'Great Western Railway V. Butler' (1922 Appeal Cases, page 1) the House of Lords observed (at page 15) that, an office or an employment of profit is an office or employment which is subsisting, permanent, substantive position, which

has an existence independent of the person who filled it, which goes on and is filled in succession by successive holders.

In the present case the expression "railway pleader" appearing in Ex. 18 is somewhat misleading. Sri Tewari (D.W. 6) has explained that, the expression "railway pleader" simply means a pleader approved by the railway. The respondent stated that in one case he appeared against the railway. It seems that the relationship of master and servant does not subsist between the North Eastern Railway and the respondent. The relationship is merely that between a client and his counsel. Ex. R shows that after 1st October 1950 the respondent was to appear for the railway only when specifically asked to do so in particular cases. We hold that although the respondent was an approved pleader, he was not a retained Government Railway Pleader. His case does not fall either under Article 102(i) (a) of the Constitution or under section 7(e), R.P. Act, 1951. He was not, therefore, disqualified for being a member of a House of Parliament. His nomination was not improperly accepted. So, the question of the result of the election being materially affected does not arise.

Issue No. 2(a).—Deodut Chaube (P.W. 1) has described the management of the Town Intermediate College, Ballia. The respondent is the President of the Board of Trustees of this College. Generally the Manager, and sometimes Sri Murli Manohar, respondent, carries on correspondence on behalf of the College. Sri Kedar Nath Sinha is the Manager of the College. The Board of Trustees selects a Managing Committee to look after the School. Sri Baijnath Sahai is the Chairman of the Managing Committee. We hold that respondent No. 1 is the President of the Board of Trustees of the Town Intermediate College, and not the President of the Managing Committee.

Issue No. 2(b).—This issue covers two separate incidents—those relating to Sonbarsa and Dighar. Firstly we take up the incident at Sonbarsa. It is common ground that Sri Chandrika Prasad Sinha is a teacher in the Town Intermediate College, Ballia, and that he was the presiding officer at Polling Station, Sonbarsa. The petitioner's case is that, instead of handing over the ballot boxes to the police guard after the poll, Sri Chandrika Prasad Sinha took the ballot boxes to the house of Raghunath Prasad in village Sonbarsa. He is a relation of Sri Sinha. Sri C. P. Sinha kept the ballot boxes at Raghunath Prasad's house in spite of a strong protest by the petitioner and others. During the night Sri C. P. Sinha broke open the boxes, took out ballot papers from the petitioner's boxes and put the ballot papers into the boxes of respondent No. 1.

To prove these allegations the petitioner examined himself (P.W. 17), and produced Sri Chandra Shekhar Singh (P.W. 16) and Sri Ram Anant Pande (P.W. 19). Chandra Shekhar Singh (P.W. 16) is a resident of Sonbarsa. His evidence is that on the evening of the polling at Sonbarsa he saw the presiding officer removing the boxes to Raghunath Prasad's house, and that he followed C. P. Sinha to that place. The witness heard some noise indicating that, boxes were being tampered with at Raghunath Prasad's house. Suspecting foul play, Chandra Shekhar Singh who is a resident of Sonbarsa, went to his house, and told the petitioner and Sri Ram Anant Pande about his suspicion. Chandra Shekhar Singh went to Beria to inform the District Magistrate and the Superintendent of Police, as they were expected at Beria that day. Chandra Shekhar Singh is son of Radha Mohan Singh. The Municipal Board started a case against Radha Mohan Singh, while Sri Murli Manohar was Chairman of the Municipal Board. Radha Mohan Singh was convicted and fined. The Municipal Board filed a suit against Radha Mohan Singh to recover arrears of taxes, while Sri Murli Manohar was Chairman of the Board. It seems that the witness has a grudge against the respondent due to the action taken by the Municipal Board against Radha Mohan Singh. Chandra Shekhar Singh says that he met C. P. Sinha at about 5-30 p.m. Polling came to an end at 5 p.m. Thereafter a large number of boxes had to be sealed. C. P. Sinha was not, therefore, likely to leave the polling station for Raghunath Prasad's house at 5-30 p.m. as stated by Chandra Shekhar Singh. On reaching the police station, Chandra Shekhar Singh did not ask the head constable to take down a report. Chandra Shekhar Singh has practised as a pleader for four years. The witness did not actually see boxes being broken. He merely heard some noise. The same evening the petitioner prepared a complaint addressed to the Returning Officer through the Presiding Officer. Ex. 8 is a copy of that complaint. Chandra Shekhar Singh's name is not mentioned in the complaint Ex. 8. The evidence of the petitioner (P.W. 17) and Sri Ram Anant Pande (P.W. 19) is to the effect that they happened to be present at Radha Mohan's house, and on receiving information they went to Raghunath Prasad's house, and protested to C. P. Sinha for bringing the ballot boxes there without a police guard. The complaint (Ex. 8) does not mention actual tampering with boxes. The objection raised in Ex. 8 was that, it was wrong to bring

the ballot boxes to a private house in the village. Sri Ram Anant Pandey was elected a member of the U.P. State Assembly in the last general election. He has been in the Congress for many years. He was petitioner's counting agent, and is an interested witness.

Chandrika Prasad Sinha appeared before the Tribunal as D.W. 4. His story is that he received information that agents and supporters of Malviya Ji and Radha Mohan were likely to tamper with and remove ballot boxes. The presiding officer had instructions to keep ballot boxes in a safe place in consultation with the local revenue staff. He was advised that, Raghunath Prasad's house would be a safe place for storing the ballot boxes. The polling station had no roof. So, in order to keep the ballot boxes in a safe place, he took them in the evening to Raghunath Prasad's house. In paragraph 7 of the written statement the fact that ballot boxes were removed to Raghunath Prasad's house was denied. But now the presiding officer himself admits that, he removed the ballot boxes from the polling station to Raghunath Prasad's house. The respondent admits that he knew this fact before he filed his written statement. His explanation is that, the denial in the written statement was unhappily worded. A perusal of paragraph 7 of the written statement shows that, the incident of removal of boxes from Polling Station Sonbarsa to Raghunath Prasad's house and the removal of boxes of Polling Station Dighar to Krishna Dutt Patwari's house in village Sher were denied in the same sentence. That might have caused the confusion. Chandrika Prasad Sinha admits that, the petitioner appeared at Raghunath Prasad's house, and protested to the Presiding Officer. C. P. Sinha went on to say that apprehending trouble from the petitioner's party, he wrote a slip to the police of Beria. When a lorry arrived with a police party, the ballot boxes were loaded into the lorry, and were taken to railway station Suremanpur. There was a camp office at Suremanpur for collecting ballot boxes from different places. He reached Suremanpur Station at about 8-30 p.m. on 31st January 1952.

C. P. Sinha referred to a number of documents prepared in the evening of 31st January 1952. He stated that he sent a slip to the police asking for help. Ex. Q is its copy, that remained with Sri C. P. Sinha. Paper No. 136A appears to be the original note sent by C. P. Sinha to the station officer of Beria. On comparing paper No. 136A with its copy Ex. Q, we find a few differences in the two documents. Ex. Q was not a true copy of paper No. 136A. C. P. Sinha says that on reaching Suremanpur Station he obtained the receipt Ex. 1 from the Camp Clerk. It was noted in Ex. 1 that, the time of delivery was 8-40 p.m. on 31st January 1952. Most of the entries in Ex. 1 were written by C. P. Sinha himself. He says that he obtained the receiving clerk's signature on Ex. 1. The election clerk appeared before us as D.W. 5. He identified Shiva Shankar Prasad's signature on Ex. 1. The signature in question is in pencil. Ex. 1 consists of writing on brown paper. The disputed signature appears in column 7, which is meant for the name of the person to whom handed over. Column 9 is meant for the signature of the person to whom handed over. The writing in column 9 is very faint. C. P. Sinha says that he obtained a writing Ex. K from the village Patwari to the effect that, Raghunath Prasad's house was a safe place. Ex. J is a note, which purports to be a writing signed by many persons to the effect that, boxes were packed and sealed at 6-30 p.m. on 31st January 1952. One of them is Ram Das Singh, polling agent of Radha Mohan Singh, who was also working there for the petitioner. None of the signatories of Ex. J, however appeared before the Tribunal. The words "at 6-30 p.m. on 31st January 1952" appear in a different ink from that of the main portion of Ex. J. C. P. Sinha's evidence is open to two objections. Firstly, he is interested in showing his good faith in removing the boxes to Raghunath Prasad's house, secondly, the documents relied upon by him were written by himself or came from his own custody. Jadunath Upadhyaya (D.W. 9) is Sabhapati of Gram Sabha of Sonbarsa. His evidence is that, he heard a talk at Radha Mohan's house that the ballot boxes should be removed to the house of Ramdas Singh. The Sabhapati reported the matter to the Presiding Officer. This Sabhapati is a retired teacher. He did not report the talk at Radha Mohan's house to any local person. For our purposes it is not necessary to decide that, such talk actually took place at Radha Mohan's house. The important point is that, if the Presiding Officer received any such information, he was entitled to take steps to protect the ballot boxes.

The respondent is the President of the Board of Trustees for the Town Intermediate College, Ballia. C. P. Sinha is a teacher in the School. We may, therefore, assume that, the respondent has got some influence over C. P. Sinha. C.P. Sinha did not impress us, when he appeared in the witness-box. He showed some clumsiness in preparing documents on 31st January 1952. But these considerations are not sufficient for holding that, this Presiding Officer tampered with ballot boxes. He has given a reasonable explanation for removing the boxes from the Polling Station to Raghunath Prasad's house. The ballot boxes appear

to have reached Suremanpur station the same evening at about 8-30 P.M. It is not correct to say that, the ballot boxes remained at Raghunath Prasad's house till the morning of 1st February 1952, as has been asserted by Sri Ram Anant Pande (P.W. 19). There is no direct evidence about tampering of boxes. Chandra Shekhar Singh, who mentions some such noise, is an interested witness. At Sonbarsa the petitioner got 682 votes, while the respondent got 588 votes. The fact that the petitioner got more votes than the respondent is a circumstance against the suggestion that, boxes were tampered with in the interest of the respondent. We, therefore, hold that the petitioner has failed to prove that, Sri C. P. Sinha broke open petitioner's ballot boxes or swelled the number of ballot papers of respondent No. 1. So, the question whether Sri C. P. Sinha was induced by respondent No. 1 to act thus does not arise.

Now, we may take up the incident relating to Polling Station, Dighar. The petitioner's case is that, the Presiding Officer of Dighar, Sri Mata Bux, removed the ballot boxes to the house of Krishna Dutt patwari in village Sher, and tampered with the ballot boxes there. The petitioner produced two witnesses on this point. They are Vishwanath Pathak (P.W. 13) and Indradeo Pathak (P.W. 14). They are both residents of village Barki Seria. They stated that Mata Bux and some other men came in a motor car. They brought down boxes from the motor car, and put them at the house of Krishna Dutt patwari. These were ballot boxes. Indradeo further stated that he heard some peculiar noise inside the room in the patwari's house. Vishwanath Pathak says that Th. Jagannath Singh, M.L.A., who won on Congress ticket, belongs to Vishwanath's village. Vishwanath says that he helped Sri Murli Manohar in the election. Now he has appeared before the Election Tribunal to give evidence against Sri Murli Manohar. It is said that, one Satnarayan Upadhyaya of the village was present, when these boxes were brought to the patwari's house. Satnarayan Upadhyaya was not produced before the Tribunal. Vishwanath says that he suspected that these men were tampering with the boxes. Yet he did not mention the incident to Sri Ram Anant Pande till eight days after the incident. Vishwanath did not go near the lorry. So, he cannot say what men were sitting in the lorry. According to Vishwanath, Mata Bux is lean. Sri Mata Bux appeared before the Tribunal as D.W. 17. He cannot be properly described as a lean man. Indradeo Pathak admitted that he and Vishwanath Pathak belong to the same Gotra. Indradeo says that all the boxes were locked, and each box had a small padlock. We take judicial notice of the fact that, the ballot boxes used in the last general election did not carry padlocks.

The respondent's version about the ballot boxes of Polling Station, Dighar is that, the police lorry, which had to remove the ballot boxes from the polling station, did not reach Dighar till 10-30 or 11 P.M. After placing the boxes in the lorry, the party left Dighar at about midnight. The lorry failed on the way, as the petrol tank was leaking. A message was sent for getting fresh supply of petrol. A relief lorry came at about 9 A.M. next morning. Then the two lorries reached Ballia at about noon on 1st February 1952. In paragraph 7 of the written statement it was denied that, the ballot boxes were removed to Krishna Dutt patwari's house in village Sher. The exact cause of delay in removing the ballot boxes was not disclosed in the written statement. The respondent admitted that he had met Mata Bux before filing the written statement. But the story narrated by Mata Bux and other witnesses was not disclosed in the written statement. Contents of an election petition are prescribed under section 83, R.P. Act 1951. The petition must be accompanied by a list setting forth full particulars of any corrupt or illegal practice which the petitioner alleges. The Act does not contain a corresponding provision prescribing the contents of a written statement. Section 90 of the Act deals with the general procedure before an Election Tribunal. An election petition has to be tried, as far as practicable, in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure. Order VIII of the Code of Civil Procedure deals with written statements. Order VIII, Rule 2 Civil Procedure Code states: "The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation release, payments, performance or facts showing illegality. In the present case the petitioner put forward an extraordinary story about the ballot boxes from Dighar. The story was denied by the respondent. The petitioner could expect that, the respondent would try to give some other account about those ballot boxes. It would have been better if the counter-story was mentioned in the written statement. But the absence of the counter-story from the written statement was not likely to prejudice the petitioner seriously.

The respondent produced three witnesses in support of his account. Hausla Prasad Sharma (D.W. 1) is a police Sub-Inspector. His evidence is that on 31st January 1952 he was on duty at police stations, Gangapur and Dighar. The motor lorry reached Gangapur at 9 or 9-30 P.M. The same lorry arrived at Dighar from Gangapur at 10-30 or 11 P.M. The Sub-Inspector said that the lorry failed at a distance of two miles from village Seria. It is to be noted that, the lorry had to carry the polling staff, their luggage and ballot boxes from two different polling stations, Gangapur and Dighar. The Sub-Inspector said that on leaving Dighar there were some 40 men in the lorry. There were 80 or 90 ballot boxes. The staff, their luggage and the ballot boxes must have made the lorry exceedingly crowded. The Sub-Inspector is an independent witness. Sita Ram Misra (D.W. 3) is a Registrar Canungo. He stated that he went to Dighar on 31st January 1952 as a Demonstration Clerk. He has supported the Sub-Inspector's account as regards the midnight journey of the lorry. Sita Ram Misra said that after an hour or so, he slept in a hut. The Sub-Inspector was looking after the boxes. Sita Ram Misra is also an independent witness. Sri Mata Bux Srivastava appeared before the Tribunal as D.W. 17. His account agrees with Hausla Prasad's account. Sri Mata Bux is Principal of Town Intermediate College, Ballia. His salary is Rs. 410 per mensem. Vishwanath Singh was the Presiding Officer for Polling Station, Gangapur. He also travelled in the lorry in Sri Mata Bux's company. But Sri Vishwanath Singh was not produced before the Tribunal. Ran Bahadur Singh (D.W. 15) is a resident of village Surajpura. He stated that in 1946 Sri Ram Anant Pande, who was then the Secretary of the District Congress Committee, appointed Ran Bahadur Singh to hold inquiry into a complaint. Indradeo Pathak and Vishwanath Pathak gave their statements in that enquiry before Ran Bahadur Singh. The file containing those papers has been summoned. The complaint (Ex. DD), dated 22nd October 1946, was directed against Sri Krishna Dutt patwari. On the back of Ex. DD, Sri Ram Anant Pande made an endorsement asking Ran Bahadur Singh to hold an inquiry. Accordingly, Ran Bahadur Singh recorded a statement Ex. FF made by Indradeo Pathak, Vishwanath Pathak and others, and made a report Ex. EE. These documents indicate that, Vishwanath Pathak and Indradeo Pathak have been against Sri Krishna Dutt Patwari since 1946.

Neither Indradeo Pathak nor Vishwanath Pathak said that he actually saw tampering of boxes. It appears that these two men came forward in this case in order to bring Krishna Dutt Patwari into trouble. The ballot boxes could not be tampered with in the manner suggested by the petitioner, unless there was a conspiracy among several officials including the presiding officer of Dighar and policemen. It is true that, as the President of the Board of Trustees, the respondent has some influence over Sri Mata Bux. But it is unlikely that, a man occupying the position of the Principal of an Intermediate College would tamper with ballot boxes merely to please the President of the Board of Trustees. The account of the lorry journey given by Hausla Prasad, Sub-Inspector, Sita Ram Misra and Sri Mata Bux, appears satisfactory. At Dighar Polling Station the petitioner got 388 votes, and the respondent got only 141 votes. The fact that the respondent received fewer votes than the petitioner as a result of counting, is an indication that, the ballot boxes were not broken in order to favour the respondent. We, therefore, hold that, the petitioner has failed to prove that Sri Mata Bux broke open petitioner's ballot boxes or swelled the number of ballot papers of respondent No. 1. The question of respondent No. 1 inducing Sri Mata Bux to act in this manner does not arise.

Issue No. 3.—This issue raises three questions. The first question is whether Keshava Lal is respondent's clerk. Sri Durga Dutt Singh (P.W. 3) is a Judicial Officer at Azamgarh. Formerly he worked as Judicial Officer at Ballia. He said that he has personal knowledge that, Keshava Prasad used to work as Sri Murli Manohar's clerk. The Judicial Officer is no longer working at Ballia. It is difficult for a presiding officer to remember that a particular person was working as a certain pleader's clerk in a previous station. Sri Tarkeshwar Pande, who is a Member of Parliament, also stated that Keshava Prasad is Sri Murli Manohar's clerk. Sri Tarkeshwar Pande was President of District Board, Ballia from 1948 to 1952. Sri Murli Manohar is the Chairman of the Municipal Board from 1947 up till now. There was a dispute between the Municipal Board and the District Board about frontage. The District Board staff filed a criminal complaint against Municipal staff. Sri Ram Anant Pande moved no-confidence motion against Sri Murli Manohar. Sri Tarkeshwar Pande voted in support of the resolution. P.W. 12 is Sri Udit Narayan Srivastava, who is at present Additional District Magistrate of Gorakhpur. Formerly he was posted as Sub-Divisional Magistrate of Ballia. He stated that there were always differences at Ballia between Sri Murli Manohar and Sri Tarkeshwar Pande. Sri Ram Anant Pande, Sri Tarkeshwar Pande and others moved Government to remove Sri Murli Manohar

from the post of Chairman of the Municipal Board. Thus, although Sri Tarkeshwar Pande is a man of status, he has not been on good terms with the respondent, Sri Tarkeshwar Pande admitted that, he helped Malviya Ji in the election, and worked as his agent. Sri Ram Anant Pande (P.W. 19) also stated that, Keshava Prasad is Sri Murli Manohar's clerk. We have seen that Sri Ram Anant Prasad also has been working against the respondent for some time.

The respondent produced a few witnesses to prove that, Keshava Lal is not his clerk. Sri Tewari (D.W. 6) said that one Raj Narayan is Sri Murli Manohar's clerk. Sri Tewari cannot say if Sri Murli Manohar has any other clerk. Sri R. P. Srivastava (D.W. 7) also said that Raj Narayan Lal is Sri Murli Manohar's clerk. Sri Munni Lal (D.W. 8) is the Munsarim of the Court of Civil & Sessions Judge, Ballia. He brought with him the register for pleaders' clerks. In this register Ram Narayan Lal is shown as Sri Murli Manohar's clerk. There is no other clerk for Sri Murli Manohar noted in the register. Keshava Lal was formerly clerk of Sri Sarju Prasad Sinha, who died in 1948. At present there is no entry in the register indicating that, Keshava Lal is the clerk of any lawyer. The Munsarim does not know what Keshava Lal is doing these days. As far as the Munsarim is aware, Keshava Lal never worked for Shri Murli Manohar. The respondent appeared as D.W. 18. He said that Keshava Lal was never his clerk. The oral evidence on the point is conflicting. The best evidence on the question is the register brought by the Munsarim (D.W. 8). There is no mention in this register that, Keshava Lal is respondent's clerk. We, therefore, hold that, Keshava Lal is not a clerk of respondent No. 1.

The next question is whether Sri Kanhaiya Lal, who was the Presiding Officer of Domaria Polling Station, was under the respondent's influence. It is common ground that Sri Kanhaiya Lal is a Sub-Deputy Inspector of Schools, and is a brother of Keshava Lal. The respondent has suggested that, Sri Kanhaiya Lal was under the influence of Sri Tarkeshwar Pande rather than under the influence of the respondent. In support of this contention, it was pointed out that, Sri Kanhaiya Lal and Keshava Lal have got a third brother, Brij Behari Lal, who is an engineer of the District Board. Brij Behari Lal was appointed engineer while Sri Tarkeshwar Pande was President of the District Board. Ex. A is a copy of the proceedings of the District Board, dated 14th June 1951. These proceedings show that, Brij Behari Lal was appointed as engineer after a contest. According to the petitioner, Sri Kanhaiya Lal lives with Keshava Lal. According to the respondent, Sri Kanhaiya Lal lives with the third brother Brij Behari Lal. The respondent has filed Exs. C, D and E, which are copies of rationing inquiry forms for the three brothers. Ex. C relating to Keshava Prasad gives the house number as 19. According to Ex. D Brij Behari Lal's house number is 3D. According to Ex. E, Sri Kanhaiya Lal's house number is 3B. These three forms indicate that, Sri Kanhaiya Lal and Brij Behari Lal are occupying two portions of the same house, while Keshava Prasad alias Keshava Lal lives in a different house. The petitioner has not suggested that, the respondent has got any direct influence over Sri Kanhaiya Lal. The petitioner tried to connect them through Keshava Lal. But we have seen that, Keshava Lal is not respondent's clerk. On the contrary, Sri Kanhaiya Lal lives in the same house as his brother Brij Behari Lal, who was appointed engineer in the District Board in the time of Sri Tarkeshwar Pande, who has got strained relations with the respondent. We, therefore, hold that, Sri Kanhaiya Lal is not under the influence of respondent No. 1.

The petitioner produced Sri Udit Narain Srivastava (P.W. 12) to prove the irregularity relating to ballot boxes of polling station Domaria. As already mentioned, Sri Udit Narain was formerly Sub-Divisional Magistrate of Ballia. There were some complaints relating to Domaria Polling Station arising out of the election for the U.P. Legislative Assembly. The District Magistrate, therefore, asked Sri Udit Narain to make an inquiry into the complaint. Ballot boxes of Polling Station, Domaria, for Parliamentary election were opened in the presence of Sri Udit Narain. He found groups of ballot papers inside Sri Murli Manohar's boxes sticking together. The largest of such group contained 24 ballot papers. Out of 351 ballot papers recovered from one box, 200 ballot papers were in unbroken serial order. Similarly, there were 483 ballot papers in another box. Out of them, 400 ballot papers were in unbroken serial order. In this way Sri Udit Narain discovered 600 ballot papers, inside respondent's boxes in unbroken serial order. Parties were agreed before us that, these 600 ballot papers were not genuine voting papers.

The question now arises: who is responsible for putting these 600 ballot papers in respondent's ballot boxes? According to the petitioner, the presiding

officer, Sri Kanhaiya Lal, introduced these 600 ballot papers. According to the respondent, his enemies introduced these ballot papers in his boxes in order to lay foundation for an election petition. In support of this contention the respondent drew our attention to Ex. U, which is the office copy of a letter addressed by the Returning Officer to the Election Commission on 9th February 1952. In this letter Ex. U, the Returning Officer wrote:—“Sri Murli Manohar also saw me. He thinks that he is leading by vast majority over all other candidates, and that someone of his rivals may have played the trick so that he may get a good ground for getting the entire election set aside.” Ex. Z is an application presented by Sri Murli Manohar to the Returning Officer on 16th February 1952. In this application the respondent wrote: “I complained to you that I suspected foul play at the instance of my opponent in Domaria polling booth and requested you to open the boxes of that polling station first to see what trick has been played.” The votes from the boxes of Domaria Polling Station (Parliamentary Constituency) were counted on 18th February 1952. Thus we find that, even before the counting of the spurious ballot papers, the respondent had mentioned his suspicion to the Returning Officer.

There is no direct evidence to show who put the 600 ballot papers in respondent's boxes. The fact that these extra ballot papers were found in respondent's boxes and were counted in his favour, raises suspicion against the respondent. On the other hand, the fact that the respondent had mentioned his suspicion to the Returning Officer before the ballot boxes are opened, is a circumstance in respondent's favour. Sri Kanhaiya Lal did not appear before the Tribunal. Sri Udit Narayan considers, that if proper precautions had been taken, it was impossible to introduce fictitious ballot papers into the boxes before, during or after the poll. We do not know exactly how these spurious ballot papers were introduced. It was not sufficient for the petitioner to raise suspicion against the respondent. The petitioner had to prove positively that, the ballot papers were introduced surreptitiously with the respondent's connivance. We have already mentioned that, it has not been proved that the presiding officer was under the influence of the respondent. We, therefore, hold that the petitioner has failed to prove that Sri Kanhaiya Lal put 600 unused ballot papers in the ballot boxes of respondent No. 1 with his connivance.

Issue No. 4.—This issue consists of four parts. They are all directed against the presiding officer of polling station Reoti. He is Sri Mahipat Prasad, and has appeared before us as D.W. 2. The petitioner has produced very little evidence on this issue. The petitioner (P.W. 17) and Indrasan Singh (P.W. 18) stated that on reaching Polling Station Reoti they heard some complaints from their workers about the unsatisfactory polling arrangements. So Indrasan Singh sent a complaint to the District Magistrate. Ex. 11 is a copy of that complaint. The complaint cannot be accepted as substantive evidence of allegations contained therein as it records all hearsay matter. Smt. Manbhavati Devi (P.W. 15) was a Polling Officer at the female booth at polling station Reoti. She stated that the presiding officer instructed her that if some female voter felt hesitant, the polling officer should put their ballot papers in the box with engine mark (respondent's symbol). She said that she was alone when the presiding officer gave her such instructions. Sri Mahipat Prasad (D.W. 2) was the Presiding Officer at polling station Reoti. He is an Assistant Registrar of Co-operative Societies. There is no suggestion that he is under respondent's influence. There was, therefore, no good reason why this Presiding Officer should have given such unusual instructions to the lady polling officer. Sri Mahipat Prasad stated that almost all the Polling agents were present at the time of sealing. These agents were standing below the verandah, and could watch the sealing of boxes. He denied having canvassed for Sri Murli Manohar. Sri Siddiqi a lawyer from Ballia (D.W. 16) stated that he was present at Polling station Reoti as respondent's polling agent. Agents of all the candidates were allowed by the Presiding Officer to go inside the polling station, and see the boxes and the sealing. The Presiding officer made no discrimination in favour of Sri Murli Manohar. Being respondent's polling agent, Sri Siddiqi is an interested witness. The presiding officer is also interested in showing that polling took place in a regular manner. However, there is no good ground for suspecting the conduct of this presiding officer, who appears to be an independent person. The evidence produced by the petitioner is meagre. At Reoti Polling Station the petitioner got 714 votes while the respondent got 609 votes. The fact that the petitioner secured more votes than the respondent goes against the theory that the presiding officer was favouring the respondent. We decide all the four parts of issue No. 4 against the petitioner.

Issue No. 5.—The most important witness on this issue is Srimati Manbhavati Devi (P.W. 15). She stated that she was instructed by the presiding officer to put ballot papers in the box with engine mark (Sri Murli Manohar's box) if some

female voters felt hesitant. Accordingly, the lady polling officer put 30 or 40 ballot papers in the box with engine symbol. Srimati Manbhavati Devi is Head Mistress of a Middle School. This is a District Board School. Sri Tarkeshwar Pande was then the President of the District Board. Her father in law is also a teacher in the District Board. We are not sure whether the President of a District Board is personally responsible for the appointment of teachers in schools managed by the District Board. But it is possible that, as President of the District Board, Sri Tarkeshwar Pande had a little influence over Smt. Manbhavati Devi. She does not remember if there was any name on the box with engine mark. She did not notice whether voters got confused near Assembly boxes. It would be surprising if as many as 30 or 40 voters cast their votes intelligently for the Assembly, but got confused near the Parliamentary boxes. The petitioner (P.W. 17) stated that when he reached Polling Station Reoti, he noticed that one female voter felt hesitant. The female polling officer approached that voter, took away her ballot paper, and put it into Sri Murlī Manohar's box. Ballot boxes are so arranged as to maintain secrecy of voting. So, although candidates are allowed to visit polling booths, it is rather difficult for a candidate to see in which particular box a ballot paper is being put. If a voter exercises his choice intelligently but experiences some difficulty in putting his ballot paper into the appropriate box due to some physical infirmity, the polling officer may render suitable assistance to such voter. The petitioner says that he received four or five oral complaints about irregularities committed on the 25th and 28th of January 1952. But the election petition does not deal with an irregularity of the 25th and the 28th. The petition is confined to the alleged irregularities of 31st January 1952 and 14th February 1952. Indrasan Singh, P.W. 18, also stated that he saw the lady polling officer putting a ballot paper in the box with engine mark. In 1951 and 1952 Indrasan Singh was working as Sanchalak for the District Congress Committee, Ballia. Originally he was working as a clerk in the Provincial Congress Committee. His pay including dearness Allowance was Rs. 125 per mensem. Indrasan Singh was not polling agent for any candidate at Reoti. Being Sanchalak of the District Congress Committee, Indrasan Singh was interested in the petitioner's election as a congress candidate. The incident mentioned by Indrasan Singh was noted in his complaint Ex. 11. Ex. 11 is no doubt dated 31st January 1952. But there is no endorsement showing the date, on which it was actually delivered to the Returning Officer. In his examination-in-chief Indrasan Singh said that he sent his complaint to the District Magistrate by post. In cross-examination the witness said that the complaint was sent through a peon.

Sri Mahipat Prasad (D.W. 2) was the Presiding Officer at Reoti. He denied having instructed the lady polling officer to put ballot papers in the box with engine mark. We have already shown that Sri Mahipat Prasad is not interested in the respondent. Sri Mahipat Prasad admits that Malviya Ji visited the polling station and complained to the District Magistrate against the Presiding Officer. Sri Mahipat Prasad cannot say why the allegations contained in Ex. 11 were made against him.

The charge under consideration was made in paragraph 8 of the petition. The details given in the list of particulars as regards paragraph 8 of the petition mentioned two women, Srimati Lachhminia and Srimati Sita Devi Misra. But the petitioner did not produce before this Tribunal a single female voter in order to prove that her ballot paper was put by the lady polling officer into the respondent's boxes. Although the statements of Smt. Manbhavati Devi and other witnesses raise a certain amount of suspicion, this evidence is not sufficiently strong to justify a definite finding that Srimati Manbhavati Devi did act as stated by her. We, therefore, decide issue No. 5 against the petitioner. There is no suggestion that Srimati Manbhavati Devi was directly induced by the respondent to act in such a strange manner.

Issue No. 6.—The charge is that the respondent used car No. U.P.G. 130 for conveying electors to and from Khawaspur Polling Station. The respondent conceded that he had engaged this motor vehicle in those days for election purposes. It was denied that the motor vehicle was used for carrying electors.

The petitioner produced two men, Dwarka (P.W. 5) and Sukar (P.W. 6), who stated that they were conducted in the motor vehicle to Polling Station Khawaspur. Dwarka is a resident of Khawaspur. His father's name is Musaddi. According to the election clerk (D.W. 5), there was on the electoral roll for Khawaspur Polling Station no voter with the description 'Dwarka son of Musaddi of village Khawaspur'. The list mentions one Dwarka son of Ganga Vishun, and another Dwarka son of Bhirudi. But there was no elector, whose description tallied with that of P.W. 5. This evidence makes it doubtful whether Dwarka (P.W. 5) went for polling at all. He admitted that he is Babu Radha Mohan's partner in cultivation. We have already shown that, Sri Radha Mohan is not on good terms with the respondent. Dwarka said that his railway ticket to Allahabad was purchased by Sukar. But Sukar

says that he did not meet Dwarka till they reached Allahabad. Sukar does not know who bought Dwarka's ticket. Sukar's own ticket was purchased by one Brahmin. Sukar said that he did not tell anybody about his journey by the lorry till he appeared before the Tribunal. Chandra Shekhar Singh (P.W. 16) admitted that Dwarka and Sukar have been cultivating in partnership with him for the last five or six years. It is, therefore, possible that these two witnesses Dwarka and Sukar were procured by Sri Radha Mohan and his son. Sri Hridaya Narain Singh (P.W. 7) is a police Sub-Inspector. He stated that on 14th February 1952 he was on duty at Khawaspur Polling Station. That day he registered a case with respect to Motor vehicle No. UPG 130. Ex. 3 is a copy of an extract from the general diary dated 15th February 1952, Motor No. UPG 130 is mentioned in Ex. 3. It also contains a reference to the complaint that, this motor vehicle was used for carrying voters. But the Sub-Inspector did not mention the result of investigation on this point. He merely said that the case was registered for not possessing a motor permit for that area. Sri Tarkeshwar Pande (P.W. 11) stated that he saw the motor car bringing voters. He brought the matter to the notice of the Presiding Officer and the police Sub-Inspector. But neither of these two officers paid much attention to the matter. The same day the petitioner presented a complaint to the Presiding Officer mentioning that the jeep car belonging to the respondent was transporting voters. Ex. 12 is a copy of that complaint.

The respondent produced two witnesses to disprove the allegation. Brij Behari Ram (D.W. 11) is Sabhapati of Khawaspur. He stated that voters did not travel by this jeep. Ram Ji Singh (D.W. 13) is a resident of village Lachhman Chhapra. He stated that he visited Khawaspur on 14th February 1952. No voter was brought on that jeep. Ram Ji Singh has got cultivation for one thousand bighas. He also owns an elephant and two horses. He admitted that the Sub-Inspector was mentioning about a complaint that the jeep was being employed to bring voters. Ram Ji Singh said that he agreed to help the respondent due to Ram Ji Singh's friendship with Kedar Nath Sinha.

It appears that at Khawaspur Polling Station the respondent secured many more votes than the petitioner. But from this fact we cannot infer that, the respondent must have used unfair means at Khawaspur. It is the well established practice of Election Tribunals that, whenever there is a charge of a corrupt practice, the Tribunal would insist on the same standard of proof as is required to prove a criminal offence. Suspicion cannot take the place of proof. The petitioner's evidence in this case has not attained that standard. The evidence of Dwarka and Sukar appears suspicious. Sri Tarkeshwar Pande (P.W. 11), has not been on good terms with the respondent. So the case is not free from doubt. We, therefore, hold that the petitioner has not succeeded in proving that, Car No. UPG 130 was used for carrying electors to and from Khawaspur Polling Station. So, the question whether that was done with the consent or connivance of respondent No. 1 does not arise.

Issue No. 7.—The petitioner produced only one witness on this point. Chittoo Misra (P.W. 10) stated that it was published in newspapers that, Sri Ram Vyas Shastri, respondent No. 3, had withdrawn his candidature and that Baldeo Upadhaya was standing on behalf of Jan Sangh. On reading that report, Chittoo Misra went to Sri Ram Vyas Shastri. About this time Sri Murli Manohar also arrived there. He paid Sri Ram Vyas Shastri Rs. 1,000 so that he might continue the contest in order to divide Malviya Ji's votes. Sri Ram Vyas Shastri was a candidate on behalf of Ram Rajya Parishad. The petitioner suggested that he and Ram Rajya Parishad were opposed to the Hindu Code Bill. So, by keeping Sri Ram Vyas Shastri in the contest, the respondent wanted to carry away some of the supporters of the petitioner. Now, it was difficult to forecast that a certain voter, who was a supporter of the petitioner, would vote for Sri Ram Vyas Shastri if he was in the field. According to Dina Nath Chaube (P.W. 8), Sri Ram Vyas Shastri is a professor in Banaras Hindu University, and is a good man. It was somewhat unlikely that a man of his position would accept Rs. 1,000 from one candidate with the object of spoiling the chances of another candidate. The incident described by Chittoo Misra was not published in any newspaper. The incident does not appear to have been put forward before any authority till it was mentioned in this election petition. Chittoo Misra says that when he reached the place, Sri Ram Vyas Shastri was sitting in a verandah opening on the road. Chittoo Misra noticed two or three other men in the verandah. But the petitioner did not produce any other witness on this point. Chittoo Misra is a resident of village Sauri Ban, and is a chance witness. In the list of particulars it was mentioned that, respondent No. 1 through Sri Kedar Nath Sinha bribed respondent No. 3. But Chittoo Misra makes no mention about Kedar Nath Sinha. According to Chittoo Misra, Sri Murli Manohar personally paid the bribe to Sri Ram Vyas Shastri. Chittoo Misra's statement is altogether unreliable. We hold that the

petitioner has totally failed to prove that, respondent No. 1 paid a bribe to respondent No. 3. So, the question whether such payment materially affected the result of the election does not arise.

Issue No. 8.—The allegation is that Sri Krishna Dutt Patwari of village Sher canvassed for respondent No. 1. Vishwanath Pathak (P.W. 13), who is a resident of village Barki Seria, stated that Krishna Dutt Patwari was canvassing for Sri Murli Manohar. A similar statement was made by Indradeo Pathak (P.W. 14). Sri Ram Anant Pande (P.W. 19) stated that he made a complaint to the District Magistrate to the effect that Krishna Dutt had been canvassing for Sri Murli Manohar. Ex. 17 is a true copy of the complaint against the patwari.

Paper No. 64C is a copy of the Tahsildar's report dated 6th February 1952. The Tahsildar wrote: "Enquiry was also made about the complaint against him of making some election propaganda for a candidate, but no substantial evidence on the point could be available". The Tahsildar's report was accepted by the Sub-Divisional Officer. Paper No. 63C is a copy of the order passed by the Sub-Divisional Officer, on 3rd March 1952. The patwari was fined Rs. 15 for not complying with instructions issued by the Supervisor Qanungo. But no punishment was inflicted on the charge of improper canvassing. The Patwari was re-instated in service.

Under issue No. 2(b) we have already discussed the evidence of Vishwanath Pathak (P.W. 13) and Indradeo Pathak (P.W. 14). We have indicated that these two men have appeared before the Tribunal with the primary object of harassing Krishna Dutt Patwari. So, the testimony of these two witnesses on the question of the alleged canvassing by the patwari becomes suspicious. We, therefore, hold that the petitioner has failed to prove that respondent No. 1 influenced Sri Krishna Dutt Patwari to canvass for him, or that the patwari did actually canvass for respondent No. 1.

Issue No. 9.—The petitioner produced a large number of witnesses on this point. Dina Nath Chaube (P.W. 8) is a resident of village Chiraiya. He stated that Sri Murli Manohar came to village Chiraiya five or six days before the day of re-poll (14th February 1952). The respondent said that he would arrange for a bridge over the river to enable voters to cross it. A motor truck came from Ballia on behalf of the respondent. The respondent arrived while the bridge was under construction. Village Chiraiya is at a distance of six miles from Municipal limits. It is not permissible to utilise municipal funds or material for work outside municipal limits. Dina Nath said that the temporary bridge was of little use to villagers. Deoraj Shukla P.W. 9 is a chaukidar in the District Board, Ballia. The municipal office and the District Board office are in the same building. One morning the chaukidar saw material loaded in a motor truck. He was told that the material was being sent for construction of a bridge at Inderpur. Sri Tarkeshwar Pande was the chairman of the District Board. It is possible that the chaukidar has appeared to give evidence against the respondent at the instance of Sri Tarkeshwar Pande. The Chaukidar appeared before the Tribunal without a summons. He stated that he saw ballis and sheets of corrugated iron in the Municipal truck. According to other evidence, only bamboos and ballis were used for the bridge. No sheets of corrugated iron appear to have been used for the bridge. Sri Tarkeshwar Pande P.W. 11 stated that he visited Inderpur after the election. He found a pole-bridge on river Chhoti Sarju. He gave an application to the District Magistrate that the bridge had been constructed by Sri Murli Manohar at Municipal expense to carry voters. Sri Tarkeshwar Pande saw the bridge two weeks after the day of the repoll. It has been conceded on behalf of the respondent that there was a bridge a few days after the day of the repoll. So the fact that Sri Tarkeshwar Pande saw the bridge two weeks after the repoll, is not of much importance. Ex. 4 is the photograph of that bridge. The petitioner (P.W. 17) stated that he visited Inderpur on 13th February 1952, i.e. one day before the re-poll. The pole bridge was there on 13th February 1952. He says that he crossed the river on the 13th by that bridge. But on the 13th midnight he crossed the river by a boat. It was explained on behalf of the petitioner that at night crossing by boat is safer than crossing by such a temporary bridge. The petitioner said that he realised that the construction of the bridge would affect the voting. Yet he did not complain to any authority on the 13th or 14th of February 1952 about the bridge. Indrasan Singh (P.W. 18) stated that he visited village Chiraiya on 12th February 1952, and saw the bridge under construction. Indrasan Singh noticed Sri Murli Manohar under a tree near the bridge and a Municipal Truck close by. Sri Ram Anant Pande (P.W. 19) also stated that he visited Inderpur on 12th February 1952, and saw the bridge there. He also saw Sri Murli Manohar a municipal truck and gangmen near the bridge. Sri Ram Anant Pande admits that he signed an application directed against Sri Murli Manohar for his removal from Chairmanship of the Municipal Board. It is true

that Sri Ram Anant Pande is a member of the U.P. Legislative Assembly, and is a man of status. But it is possible that, he has given evidence on account of party factions.

The respondent's contention is that, such a bridge was not in existence at all on the day of the repoll. The respondent had nothing to do with the construction of the bridge. The bridge was later constructed by one Har Narayan Chaudhari. The question of the pole-bridge was dealt with in paragraph 15 of the written statement. It was stated in the written statement that no such pole-bridge as alleged was constructed by respondent No. 1. But it was not mentioned in the written statement that the pole-bridge did not exist at all on 14th February 1952, or that the bridge was constructed by Sri Hari Narain Chaudhari. It is true that it was desirable to mention this specific case in the written statement. But we have previously pointed out that, the provisions of R.P. Act 1951 are not so rigorous about the contents of a written statement as with respect to contents of an election petition.

Sri Ram Bahadur Lal (D.W. 10) is the Executive Officer of the Municipal Board Ballia. He stated that no material belonging to the Municipal Board was taken out to Chiraiya. In the Municipal records there is no entry about the construction of such a bridge. The alleged construction of the bridge from Municipal funds was clearly improper. Such expenditure would not be noted in Municipal registers. Being the Executive Officer of the Municipal Board, Sri Ram Bahadur Lal is likely to be under the influence of the respondent, who is its Chairman. D.W. 12 is Har Narayan Chaudhari. He said that it was he, who constructed the bridge. The bridge was constructed eight or ten days after 14th February 1952. There was no bridge before 14th February 1952. He is a resident of village Chiraiya. He is a graduate of Banares Hindu University, and has got cultivation for about 350 bighas. He is Sahbapati of the Gaon Sabha of Chiraiya. He says that he did not tell the respondent, that, he (Har Narain) had constructed the bridge eight or ten days after the repoll. Har Narain has no writing of any kind to prove that he has been in the habit of building such bridges annually, for the last twelve or thirteen years, as claimed by him. Suraj Narain Singh (D.W. 14) stated that he went to Inderpur on 12th February 1952. There was no bridge there. He is a resident of village Manihar. He said that he went to Inderpur to see his ailing maternal uncle. Formerly Suraj Narain Singh used to pay Rs. 5,400 as land revenue. He was a Member of the Provincial Assembly for about nine years. He was Chairman of the District Board for fourteen years. He claims to be a Congressman. Yet he canvassed for one Sheo Prasad, who belonged to K.M.P. Party. The respondent (D.W. 18) denied that he constructed any such bridge at Inderpur. The alleged construction of the bridge was objectionable on two grounds. Firstly, it was improper to utilise Municipal funds for constructing a bridge many miles outside the Municipal Limits. Secondly, constructing such a bridge about the time of the re-poll amounted to illegal gratification. The bridge could not be constructed secretly. Many persons must have seen the bridge being constructed. Admittedly, the bridge remained there for many days after 14th February 1952. It was somewhat unlikely that the respondent would have committed such an act openly. It is said on behalf of the petitioner that the respondent personally supervised the construction of the bridge.

P.W. 12 is Sri Udit Narain Srivastava, who was then Sub-Divisional Magistrate at Ballia. Under orders of the District Magistrate, Sri Udit Narain made an inquiry about the bridge at Inderpur. When he visited the spot, he found a sort of bridge there. Ex. 4 is a photograph of that bridge. Sri Udit Narain admitted that he did not see the bridge on the day of the re-poll. On the day of the repoll, he crossed the river by a boat. That day nobody complained to him about the construction of a pole bridge. According to Sri Ram Anant Pande (P.W. 19) the bridge was at a distance of one furlong from Inderpur polling station. If the bridge was in existence on 14th February 1952 at a distance of one furlong from the Polling Station, it seems surprising that Sri Udit Narain did not notice the bridge that day.

It appears that at Inderpur Polling Station the respondent secured more votes than the petitioner. But this fact might not be the result of the pole-bridge. No doubt, the petitioner has produced a good deal of evidence to show that the bridge was constructed shortly before the re-poll, and that the respondent supervised the construction. But the facts that Sri Udit Narain did not notice the bridge on the day of the repoll, and that the petitioner or his sympathisers did not make any complaint to authorities on or about that day suggest that no such bridge was in existence on 14th February 1952. There was no point in the respondent's constructing a bridge after the repoll. We, therefore, hold that the petitioner has failed to prove that respondent No. 1 constructed the pole-bridge as alleged by the petitioner.

Issues Nos. 10 and 11.—These issues were not pressed on behalf of the petitioner. The two issues are, therefore, decided against the petitioner.

Issue No. 12.—We have seen that the petitioner has failed on most of the issues. The only important point established by the petitioner is the recovery of 600 ballot papers arranged in packets from respondent's ballot boxes. Parties are agreed that, these 600 ballot papers do not represent genuine votes. Sri Gopal Ji Mehrotra appearing for the petitioner contended that the illegality amounts to a major corrupt practice under sub-sections (3) and (8) of Section 123, R.P. Act, 1951. Sub-section (3) is: "The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a ballot paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person for a ballot paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote". This sub-section contemplates cases of the nature of personation. In the present case there is no evidence to show that any voter was guilty of personation. Sub-section (8) is: "The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person". It was argued that the presiding officer Sri Kanhaya Lal was responsible for these spurious votes. So since Sri Kanhaya Lal was a Government servant, the case falls under sub-section (8) of section 123. Now, the Presiding Officer might have been guilty of negligence for the irregularity discovered in the counting. But there is no definite evidence on the point. Again, mere negligence on the part of a Government servant would not bring the case under sub-section (8) of section 123. We do not know definitely how the fraud was committed. So neither sub-section (3) nor sub-section (8) of Section 123 applies to the present case.

Section 136(1), R.P. Act, 1951, states: "A person shall be guilty of an electoral offence if at any election he..... (e) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in.". It may be that the person responsible for the fraud is guilty under section 136 of the Act. But we do not know who that person is. The respondent cannot be penalised simply because somebody committed the fraud.

The case really falls under Rule 47 of R.P. Rules, 1951. Rule 47 states: "(1) A ballot paper contained in a ballot box shall be rejected if..... (d) the Returning Officer is satisfied that it is a spurious ballot paper or that it has been so damaged or mutilated that its identity as a genuine ballot paper cannot be established..... (4) the decision of the Returning Officer as to the validity of a ballot paper contained in a ballot box ... shall be final subject to any decision to the contrary given by a Tribunal on the trial of an election petition calling in question the election". The 600 papers in question were in fact spurious ballot papers. So the Returning Officer should have rejected these papers under Rule 47(1)(d). It appears that the Returning Officer treated these 600 ballot papers as valid votes, and credited them to the respondent's account. This error can be corrected by us, under sub-rule (4) of Rule 47. The statement of the election clerk (D.W. 5) shows that, the petitioner secured 40,962 votes, while the respondent got 47,393 votes. Even after rejecting the 600 spurious ballot papers, there are 46,793 votes left in the respondent's account. Thus, even then respondent No. 1 gets a majority of 5,831 votes over the petitioner. Respondent No. 1 still wins by a comfortable majority. We, therefore, hold that the irregularity relating to the polling at Domaria Polling Station did not materially affect the result of the election. Issue No. 12 is decided against the petitioner.

Issue No. 13.—The prayer appearing at the foot of the election petition runs thus: "(A) The petitioner prays for the following among other reliefs, that the election of the respondent No. 1 as member of the House of the People of the Indian Union be declared void and the petitioner be declared duly elected for the said House, or, (B) that the election of the Respondent No. 1 be declared void". It was urged for the respondent that, alternative reliefs were wrongly associated in the petition.

This contention must be rejected for two reasons. Firstly, a petitioner has an inherent right to claim reliefs in the alternative. Section 98, R.P. Act, 1951, provides for a number of reliefs. A petitioner may not be sure whether he will succeed in getting a particular relief. In that case he may claim two reliefs in the alternative. There was no need to make an express provision in the Statute to enable a petitioner to claim reliefs in the alternative. Secondly, upon the wording of the prayer contained in the present petition, relief (B) is contained in relief (A). So, this is hardly a case of alternative reliefs. We hold that the association of alternative reliefs in the petition does not render it unsustainable in law. The issue is decided against respondent No. 1.

Issue No. 14.—The petitioner has not been able to prove any corrupt or illegal practice. Under issue No. 12 we have found that, the irregularity with respect to the polling at Domaria did not materially affect the result of the election. The election petition must, therefore, be dismissed. The petitioner will have to pay costs of respondent No. 1, which we assess at Rs. 600. Since respondent No. 3 did not appear in the witness box, he may be ordered to bear his own costs.

ORDER

The election petition is dismissed. Under Section 99 R.P. Act, 1951, we record that no corrupt or illegal practice has been proved against any respondent. The petitioner shall pay respondent No. 1 Rs. 600 as costs. The petitioner and other respondents shall bear their own costs. The petitioner is entitled to a refund of the balance (Rs. 400) of his security deposit.

The 17th August 1953.

(Sd.) V. G. OAK, I.C.S., *Chairman.*

(Sd.) N. N. MUKERJI, *Member.*

(Sd.) BABU RAM AVASTHI, *Member.*

1. Shri Gopal Jee Mehrotra,
2. Shri S. N. Kakar,
3. Shri M. P. Shukla,
4. Shri Gopi Krishna, Bar.-at-Law,
5. Shri Baqar Usmani—*Counsel for Petitioner.*
1. Shri R. N. Basu,
2. Shri A. P. Pandey,
3. Shri S. K. Srivastava,
4. Shri Balram Lal Srivastava,
5. Shri S. D. Pandey,
6. Shri S. K. Sahai—*Counsel for respondent No. 1.*

ANNEXURE A

IN THE COURT OF THE ELECTION TRIBUNAL AT ALLAHABAD

PRESENT.—Sri V. G. Oak, I.C.S., *Chairman.*

ELECTION PETITION No. 198 of 1952

Sri Govind Malviya—*Petitioner*

Versus

Sri Murli Manohar and others—*Opp. Party.*

ORDER

In this election petition the petitioner has prayed for getting the election of respondent No. 1 set aside on various grounds. Respondent No. 1 in his written statement raised a number of pleas. One of the pleas raised in defence is that the verification of the election petition is defective, and the petition is, therefore, liable to be rejected. It is further pleaded that certain paragraphs of the petition are vague and defective for want of necessary particulars. These paragraphs are therefore, liable to be struck off. Again the list of particulars attached to the petition is vague, indefinite and lacking in details. On these pleas the following three preliminary issues were framed:—

ISSUES

1. Is the election petition liable to be rejected on account of defective verification of the petition?
2. Are paragraphs 19, 20, 21, 23, 24, 25, 28, 29, 31 and 32 of the petition vague and defective for want of necessary particulars? Are these paragraphs liable to be struck off?
3. Is the list of particulars vague indefinite and lacking in details prescribed under section 83(2) of the Act? If so, its effect?

FINDINGS

Issue No. 1.—When the election petition came up for hearing on 7th October, 1952, the petitioner filed application No. 14-A for amendment of the verification

of the election petition. Respondent No. 1 has filed his objection (26-C) to the application for amendment No. 14-A. This application for amendment (14A) has to be considered along with issue No. 1.

Section 83 Representation of the People Act, 1951 deals with the contents of an election petition sub-section (1) deals with the main election petition, while sub-section (2) refers to the list of particulars which has to accompany the election petition. Each of these two documents has to be verified in the manner laid down in the Civil Procedure Code for verification of pleadings. Order VI rule 15 Civil Procedure Code deals with verification of pleadings. Order VI rule 15 states:

"15. (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed."

It will be seen that under sub-rule (2) of rule 15 the person verifying a pleading has to mention separately what he verifies of his own knowledge and what he verifies upon information received and believed to be true. Separate reference has to be made to the number of paragraphs of the pleadings.

In the present case the following verification appears at the foot of the election petition:

"I verify that the contents of this petition are true to my knowledge and belief. Dated Banaras 23rd of April, 1952."

The same verification appears at the foot of the list of particulars. It will be noticed that the petitioner did not mention separately with reference to different paragraphs as to which matter was to his knowledge and which matter was based upon information received and believed to be true. It was conceded on behalf of the petitioner that, the verifications at the foot of the petition and the list of particulars are defective. That is why he found it necessary to apply for amendment, of the verification.

Sri A. P. Pandey appearing for the respondent contended that, as the verification is admittedly defective, the petition should be dismissed under sub-section (4) of section 90 Representation of the People Act, 1951. Section 90(4) states:

"Notwithstanding anything contained in section 85 the Tribunal may dismiss an election petition which does not comply with the provisions of section 81, section 83, or section 117."

It was argued that there was non-compliance with section 83 of the Act as regards verification of the petition and the list of particulars. So the petition ought to be dismissed under section 90(4).

When Sri Pandey's attention was drawn to the fact that the word used in section 90(4) is 'may' and not 'shall', he argued that the word 'may' carries the sense of compulsion. He cited a number of cases, in which it has been held that, where power is coupled with duty, the word 'may' carries the sense of 'shall'. In *Commissioner of Police v. Gordhan Das* (A.I.R. 1952 Supreme Court 16) the question related to the grant to the respondent for building a cinema house. Rule 250 framed on the point provided that, "The Commissioner shall have power in his absolute discretion at any time to cancel or suspend any licence granted under these Rules". It was held by the Supreme Court that the discretion vested in the Commissioner of Police under rule 250 had been conferred upon him for public reasons involving the convenience, safety, morality and welfare of the public at large. An enabling power of this kind conferred for public reasons and for the public benefit was coupled with a duty to exercise it when the circumstances so demanded. It was a duty which could not be shirked or shelved nor could it be evaded."

In the present case there is no question of this Tribunal evading its duty. The Tribunal is certainly going to apply its mind to the question whether the objection should be dismissed under section 90(4). The point for consideration is whether the question of dismissal of the objection is a matter of discretion. We do not think that the present case falls in that small group of special cases, in which the word 'may' carries the sense of compulsion. Section 90(4) opens with the words "Notwithstanding anything contained in section 85". The reference to section 85 indicates that, section 85 and 90(4) ought to be read together. The word used

in section 85 is 'shall', whereas the word used in section 90(4) of the Act is 'may'. It, therefore, appears that under section 90(4) of the Act the question of dismissal of the petition is a matter for the Tribunal's discretion. The Tribunal is not bound to dismiss an election petition for every non-compliance of sections 81, 83 and 117 of the Act. The test to be applied will be this: If the defect is trivial, it will be condoned. If the defect is serious, the election petition will be dismissed.

In *Shib Deo Misra v. Ram Prasad* (XLVI Allahabad 637) it was held that a plaint which is filed without having been verified in the manner prescribed by the Civil Procedure Code is not an invalid document, but may be verified at a later stage of the suit, even after the expiry of limitation.

Sri Pandey conceded that under normal circumstances the law applicable is as laid down in *Shib Deo Misra's* case. But it was contended that, a strict view of the matter ought to be taken in election petitions. Reference was made to Order XXXIII Civil Procedure Code. Order XXXIII deals with suits by paupers. Rule 2 of Order XXXIII prescribes the contents of an application for permission to sue as a pauper. Such an application has to be verified in the manner prescribed for the signing and verification of pleadings. Order XXXIII, Rule 5 lays down that, the Court shall reject an application for permission to sue as a pauper where it is not framed and presented in the manner prescribed by Rules 2 and 3. Nevertheless it has been held that the court is not bound to reject an application for permission to sue as a pauper simply because the application has not been properly verified. In *Piari Lal v. Bhagwan Das* (A.I.R. 1933 Allahabad 295) it was held that, if the application to sue as a pauper is not properly verified, the court should offer a chance to the applicant to correct the defect, and should not reject the application.

Sri A. P. Pandey strongly relied upon the decision of the Election Tribunal in Election Petition No. 83 of 1952. That election petition related to Mahsana East constituency. The decision is published in the *Gazette of India (Extraordinary)* Part I, dated 10th October, 1952, at page 2261. In that case also the verifications of the petition and the list of particulars were defective. The verification at the foot of the list of particulars was in this form:—

"I,.....declare that what is stated in paragraphs 1 to 6 of the foregoing petition is true to my own knowledge and that what is stated in the remaining paragraph is stated on information and belief and I believe the same to be true."

It was pointed out that the reference in the verification was to be paragraphs of the petition and not to paragraphs of the list. The same defect appears in the present case, also. The verification at the foot of the list of particulars refers to the petition and not to the list. But this appears to be a clerical error. There was a separate verification at the foot of the main petition. There was no point in verifying the petition again at the foot of the list of particulars. In *Mahsana East* case the Election Commission drew the attention of the petitioner to the defective verification. Thereupon the petitioner furnished a fresh verification. It was held by the Tribunal that, the petitioner could not be permitted to furnish a fresh verification after the expiry of the period of limitation. It was true, that, the Tribunal held that there was non-compliance of section 83(2) with regard to the requirements about verification of the list of particulars. But that was not the sole ground for dismissing the election petition. The Tribunal went through the list of particulars, and found that the list was lacking in necessary particulars. In view of all these defects the petition was dismissed. In that case the petitioner's claim rested solely on alleged corrupt and illegal practices. It was, therefore, observed: "When there are not particulars, as there is no list, there can be no trial on the allegations of corrupt or illegal practices, and, therefore, there is no option left to the Tribunal but to dismiss the petition". In the present case before us the position is slightly different. The petitioner has complained about certain irregularities in addition to the charges of corrupt and illegal practices. The alleged irregularities will have to be investigated, even if the charges of corrupt and illegal practices fail. The petition should not be thrown out simply on the ground of defective verification of the list of particulars.

In *Rajit Ram v. Katesar Nath* (18 Allahabad 396) the verification of the plaint was in this form:

"The contents of the petition of plaint are true to the best of my knowledge and belief."

It was held by a Full Bench of Allahabad High Court that this form of verification, though not free from ambiguity was in substantial compliance with the provisions of section 52 of the Code of Civil Procedure. If matters alleged as facts

are true to the plaintiff's knowledge they must be true to his belief. The verification in the present case is in the same form. Sri A. P. Pandey, tried to distinguish the present case from Rajit Ram's case on the ground that in that case the defect in verification was not noticed till the case reached the appellate court whereas in the present case the respondent has pointed out the defect at the earliest opportunity. That no doubt is one point of difference. But that point has nothing to do with the main question whether the defect in verification is trivial or substantial. Four questions were referred to the Full Bench. The first question was whether a plaint verified in such terms is defective in law. On this point the answer given by the Full Bench was that although the verification is not in strict compliance with the Code, it substantially complies with it.

According to the original verification, the petitioner has personal knowledge of all the allegations. But according to the application for amendment, certain paragraphs are true to his personal knowledge, while other paragraphs are believed by him to be true. There is some inconsistency between the original verification and the verification contained in the application for amendment. But we are not concerned with the question whether the original verification is true or false. The question for consideration under issue No. 1 is whether the verification is in proper form. If the verification is false, the petitioner may have to pay the penalty for making a false verification.

We accept the view taken in Rajit Ram's case and hold that although the verifications of the election petition and the list of particulars are defective, there was substantial compliance with Order VI, Rule 15, Civil Procedure Code, and section 83 Representation of People Act, 1951. The election petition ought not to be dismissed merely on the ground of defective verification.

Issue No. 1 is decided against the respondent.

There is much authority for the proposition that an election petition cannot be amended before the Tribunal. The application (14-A) raises the somewhat difficult question whether verification of the petition can be amended before the Tribunal at all. But since we have held that there was substantial compliance with the provisions of section 83 of the Act, there is hardly any necessity of amendment of the verification. It was observed in Rajit Ram's case that it would be difficult to imagine any case in which a defective verification of a plaint could affect the merits of the case. Amendment of verification at this stage appears unnecessary. We, therefore, dismiss application No. 14-A.

Issue No. 2.—The learned counsel for the respondent did not seriously press this issue. We have, however, gone through paragraphs objected to. It is true that some of the paragraphs are worded in general terms. But an election petition need not contain the same details as are required in the list of particulars. It is sufficient that the election petition contains a concise statement of material facts. We need not, therefore, take serious notice of the loose language used at certain places in the election petition. However, paragraphs 20, 28 and 31 of the petition deserve special notice. Paragraph 20 of the petition states that the respondent No. 1 and his agents bribed the voters to cast their votes in favour of respondent No. 1. No details are given in paragraph 20. Even the list of particulars does not give details about the alleged bribing of voters. No issue can be framed upon such a vague charge. According to paragraph 28 of the petition respondent No. 1 manipulated to issue false pamphlets in the names of persons who really did not know them and never gave their consent for their publication. We do not know the persons in whose names pamphlets were issued. No such pamphlets have been filed. It is stated in paragraph 31 that the return of election expenses filed by respondent No. 1 is not according to rules. This paragraph gives no idea as to the defect in the return. No action can be taken upon such vague allegations. We decide that paragraphs 20, 28 and 31 of the election petition are vague and defective for want of necessary particulars. We direct that these three paragraphs shall be struck off. The remaining paragraphs mentioned under issue No. 2 will stand.

Issue No. 3.—For purposes of this issue Sri Pandey divided the paragraphs contained in the list of particulars into three groups. It was urged that, the first group containing paragraphs 1, 3, 4, 5, 7, 15 and 16 does not deal with corrupt or illegal practices, at all, and these charges are out of place in the list of particulars. There is much force in this contention. But this contention has little bearing on issue No. 3 as framed. The respondent's grievance was vagueness in the particulars given. It was not complained that, unnecessary matter has been introduced in the list of particulars. This group of charges is more or less a repetition of the allegations in the election petition. We shall have to frame issues on those charges in the election petition, even if it is considered that these charges are out of place in the list of particulars. So striking off these paragraphs will have

no practical effect. This group of charges contained in the list of particulars may stand.

It was urged that paragraph 6 of the list of particulars does not correspond with any charge in the election petition. Paragraph 6 of the list of particulars states:

“At Baragaon polling station too a similar attempt was made by the presiding officer to increase the votes of respondent No. 1 by 1,650 votes.”

It is true that the election petition does not make a specific reference to the alleged irregularity at Baragaon polling station. But there was reference to the irregularity at Domaria polling station. Paragraph 5 of the list of particulars deals with the irregularities at Domaria polling station. The charge contained in paragraph 6 of the list of particulars is similar to the charge contained in paragraph 5 of the list of particulars. It is always open to a petitioner to give various instances on the same charge. The petitioner was entitled to mention the charge contained in paragraph 6 of the list of particulars, although the same details are not given in the main election petition.

The third group consists of paragraphs, which are said to be with insufficient particulars. Sri Gopal Ji Mehrotra appearing for the petitioner conceded that, paragraph 2 of the list of particulars is of a general nature and lacks in details. Such a general allegation ought not to find place in the list of particulars. It is stated in paragraph 8 that the lady polling officer at polling station Rewati used to take ballot papers from the hands of voters and put them herself in the ballot boxes of respondent No. 1. It is easy to fix the lady polling officer who was posted at Rewati polling station. But the petitioner should be directed to give the name of the polling officer and names of voters who were thus affected. The petitioner may be called upon to give further and better particulars on this point.

In paragraph 9 it is alleged that, respondent No. 1 hired a motor car on 14th February, 1952 for bringing voters to and from polling station Khawasapur. The petitioner should be ordered to give names of the villages and the voters concerned.

According to paragraph 10, respondent No. 1 and his agents freely bribed voters. There are no details. This vague allegation must be struck off.

According to paragraph 11, respondent No. 1 bribed and persuaded respondent No. 3 to stand for the election in order to divide the voters of the petitioner. The petitioner should be directed to mention the time, place and the amount of bribe paid.

It is stated in paragraph 12 that, respondent No. 1 wielded influence over patwaris of the district. Specific reference has been made to one Kishun Dutt Patwari. It will be open to the petitioner to give evidence about undue influence exercised over Kishun Dutt Patwari. But the Tribunal will not permit the petitioner to give evidence about undue influence exercised over other Patwaris under paragraph 12 of the list.

ANNEXURE A

It is stated in paragraph 13 that, patwaris of the Constituency threatened the voters. Not a single patwari has been named in this paragraph. This vague paragraph should be struck off.

It is alleged in paragraph 14 that the respondent constructed a pole bridge in order to influence voters. The petitioner should be directed to give particulars about the date of construction of the bridge and the amount spent.

It is stated in paragraphs 17 and 18 that, the respondent issued and arranged for publication of pamphlets. No names have been given. The objectionable pamphlets have not been filed. Sri Gopal Ji Mehrotra did not seriously press paragraphs 17 and 18 of the list.

In the result we order that, paragraphs 2, 10, 13, 17 and 18 shall be struck off the list of particulars. We order the petitioner to give further and better particulars under paragraphs 8, 9, 11 and 14 as indicated above in ten days.

Issue No. 3 is decided accordingly.

(Sd.) V. G. OAK, *Chairman.*

(Sd.) N. N. MUKERJI, *Member.*

(Sd.) BABU RAM AVASTHI, *Member.*

The 2nd December, 1952.

[No. 19/198/52-Elec.III/2035.]

By Order,

F. R. KRISHNAMURTHY, *Asstt. Secy.*